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# UNITED STATES DISTRICT COURT

## DISTRICT OF NEVADA

AETNA INC.,

Plaintiff,

v.

ALL MARKET PRODUCTS &  
SERVICES, LLC et al.,

Defendants.

Case No. 2:16-cv-01819-JAD-PAL

## STIPULATED DISCOVERY PLAN AND SCHEDULING ORDER PURSUANT TO FRCP 26(f) AND LOCAL RULE 26-1(b)

### SPECIAL SCHEDULING REVIEW REQUESTED

The parties, through their counsel, submit the following Stipulated Discovery Plan and Scheduling Order pursuant to the requirements of Federal Rule of Civil Procedure ("FRCP") 26 and Local Rules of Practice for the United States District Court for the District of Nevada ("LR") 26-1(b). This scheduling and discovery plan is shorter than the deadlines stated in LR 26-1(b) because of Plaintiff Aetna Inc.'s ("Plaintiff" or "Aetna") request for, and this Court's order granting, expedited discovery.

1 On July 29, 2016, Plaintiff filed its Complaint against Defendants. On August 23, 2016,  
2 counsel for Defendants first filed an appearance. Defendants have not yet filed an Answer to the  
3 Complaint.

4 **FRCP 26(f) Meeting.**

5 Pursuant to FRCP 26(f) and LR 26-1(a), on September 7, 2016 and September 12  
6 respectively, telephonic discovery conferences were held between counsel for Aetna, William F.  
7 Dolan, and (i) counsel for All Market Products & Services, LLC (d/b/a Dental Shield USA),  
8 Dental Club America, LLC, Ryan Ousdahl, and Andrew D. Ross, Eric Menhart, and (ii) Dean  
9 Austin. This Order reflects the fruits of those discussions.

10 **1. Discovery Scope and Scheduling.**

11 The parties jointly propose to the Court the following discovery plan: Written discovery  
12 and depositions as allowed under the FRCP. The subjects on which discovery may be needed  
13 include, but shall not be limited to, Defendants' use of Aetna's trademarks; Defendants'  
14 communications with consumers regarding the sale or marketing of Aetna products, services, or  
15 networks; Defendants' sales associated with the Aetna trademarks; the marketing scripts  
16 Defendants used; recordings of consumer interaction; Defendants' corporate structure;  
17 Defendants' relations with telemarketers; and damages (if any) subject to recovery under  
18 applicable law.

19 **2. Discovery Cut-Off Date (LR 26-1(b)(1)).**

20 LR 26-1(b)(1) prescribes a discovery cut-off date of 180 days from the date of  
21 Defendants' first appearance. Plaintiff requests an alternative discovery cut-off date of  
22 December 20, 2016 (120 days) because of the Court's Order granting expedited discovery.  
23 Defendants do not oppose Plaintiff's request. Further, as Plaintiff has already served initial  
24 discovery requests on Defendants, Defendants shall respond to Plaintiff's initial discovery  
25 requests by September 23, 2016. Additionally, written discovery shall close on October 31,  
26 2016.

1           3.     **Amendment of Pleadings and Adding Parties (LR 26-1(b)(2)).**

2           LR 26-1(b)(2) prescribes a discovery cut-off date of 90 days before the close of  
3 discovery. Plaintiff requests an alternative deadline of October 31, 2016 for filing motions to  
4 amend the pleadings or to add parties. Defendants do not oppose Plaintiff's request.

5           4.     **FRCP 26(a)(2) Disclosures (Experts) (LR 26-1(b)(3)).**

6           The parties do not anticipate the need for experts at this time. However, if expert  
7 discovery becomes necessary, the parties will discuss a schedule and present the Court with an  
8 agreed schedule.

9           5.     **Dispositive Motions (LR 26-1(b)(4)).**

10          Pursuant to LR 26-1(b)(4), the deadline for filing dispositive motions shall be January  
11 19, 2017.

12          6.     **Pretrial Order (LR 26-1(b)(5)).**

13          Pursuant to LR 26-1(b)(5), the parties' joint pretrial order shall be filed by February 20,  
14 2017 unless dispositive motions are filed, in which case, the parties' joint pretrial order shall be  
15 filed within 30 days after decision on the dispositive motions or upon further order of this  
16 Court.

17          7.     **FRCP 26(a)(3) Disclosures (LR 26-1(b)(6)).**

18          Pursuant to FRCP 26(a)(3), the parties will submit their pretrial disclosures within 30  
19 prior to trial, unless the Court orders otherwise.

20          8.     **Alternative Dispute Resolution (LR 26-1(b)(7)).**

21          Pursuant to LR 26-1(b)(7), the parties have met and conferred about the possibility of  
22 using alternative dispute resolution processes, including mediation and arbitration. At this point  
23 in time, the parties have not agreed to use any alternative dispute resolution processes.

24          9.     **Alternative Forms of Case Disposition (LR 26-1(b)(8)).**

25          Pursuant to LR 26-1(b)(8), the parties have considered consent to trial by a magistrate  
26 judge under 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73 and the use of the Short Trial Program  
27 (General Order 2013-01). At this point in time, the parties do not consent to trial by a magistrate  
28



1 judge nor the Short Trial Program, however, the parties are continuing to discuss such  
2 possibilities.

3 **10. Electronic Evidence (LR 26-1(b)(9)).**

4 Pursuant to LR 26-1(b)(9), the parties have discussed the possible presentation of  
5 evidence in electronic format to jurors for the purposes of jury deliberation. The parties believe  
6 that it is premature to stipulate to any format or use of electronic evidence at this time, but the  
7 parties will continue to discuss this issue after the initial round of discovery has been produced.

8 **11. Interim Status Report (LR 26-3).**

9 Local Rules contemplate the filing of the LR 26-3 Interim Status Report on October 21,  
10 2016. Plaintiff requests an alternative deadline of November 22, 2016 for the filing of the LR  
11 26-3 Status Report, in accordance with the requested discovery cut-off dates described above.  
12 Defendants do not oppose Plaintiff's request.

13 **12. Pre-Discovery Disclosures.**

14 By September 30, 2016, the parties shall exchange the initial disclosures required by  
15 FRCP 26(a)(1).

16 **13. Settlement.**

17 The parties have engaged in informal settlement discussions. The parties remain  
18 willing to discuss settlement but do not request any orders relating to settlement at this time.

19 **14. Later Appearing Parties.**

20 A copy of this Discovery Plan and Scheduling Order shall be promptly served on any  
21 person served after it is entered or, if additional Defendants should appear, following their first  
22 appearance. This Discovery Plan and Scheduling Order shall apply to such later-appearing  
23 parties unless the Court, on motion and for good cause shown, orders otherwise.

24 **15. Extensions or Modifications of the Discovery Plan and Scheduling Order.**

25 LR 26-4 governs modifications or extensions of this Discovery Plan and Scheduling  
26 Order. Plaintiff requests a deadline of November 29, 2016, which is 21 days before the  
27 requested discovery cut-off of December 20, 2016. Defendants do not oppose Plaintiff's  
28 request.

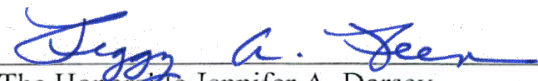
1           **16. Issues Relating to Claims of Privilege or Protection.**

2           The parties anticipate that each side will request production of documents which are  
3 confidential and proprietary. Defendants will provide Plaintiff with a proposed Confidentiality  
4 Agreement and Order for review and submission to the Court.

5           **17. Issues Relating to Electronically Stored Information.**

6           The parties have had preliminary discussions regarding electronically stored information  
7 (“ESI”) and the potential form of production of documents and ESI, but have yet to agree on  
8 specific requirements. The parties, however, do not contemplate any issues regarding ESI and  
9 form of production of documents.  
10

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15           IT IS SO ORDERED:

16             
17           The Honorable Jennifer A. Dorsey  
18           United States District Court Judge

19  
20           DATED: September 23, 2016

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24           [signatures on following pages]  
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1  
2 STIPULATED AND AGREED:

3 Dated: September \_\_, 2016

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11 Dated: September 12, 2016

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America, LLC, Ryan Ousdahl, and Andrew  
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21 Dated: September \_\_, 2016

Dean Austin

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1  
2 STIPULATED AND AGREED:

3 Dated: September 12<sup>th</sup> 2016

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15 Dated: September \_\_, 2016

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24 Dean Austin  
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